1452/06

Filed on 29/3/06
by Shri Maushen Advocate
29/3/06
R to D R. (J)

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Single Bench

IN THE HIGH COURT OF JUDUCATURE OF AT BILASPUR CHHATTISGARH

Criminal Revision No. 207 /2006

APPLICANT : Tushar Patil, Aged about 25 years, S/o. Late Bhagwan Singh Patil, R/o. P.W.D. Colony, Qtr. No. 4, Naharpara (Besides Nahar), Anand Nagar, Raipur (CG)

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VERSUS

NON-APPLICANT : State of Chhattisgarh,
Through: Police Station Telibandha, District - Raipur (CG)

CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-22

(37)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Rev. 207/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

31.03.2006

Shri Manoj Paranjpe, learned counsel for the applicant.

Shri Ashish Shukla, G.A. for State/respondent.

Heard on I.A. No. 811/2006 for urgent hearing.

The matter is taken up on Board.

Learned counsel for the applicant submits that he does not want to press M.Cr.P. No. 659/2006 for grant of stay and prays that this revision be heard finally at the stage of admission and disposed of.

Prayer is not opposed.

Accordingly, M.Cr.P. No. 659/2006 is dismissed as not pressed.

This revision is directed against the order dated 7.3.2006 passed by Smt Sushma Sawant, learned 4th Addl. Sessions Judge (F.T.C.) Raipur in Sessions Trial No. 4/2006 whereby the application filed by the applicant herein for a D.N.A. test has been dismissed.

Brief facts as disclosed by the statement under Section 161 Cr.P.C. of the prosecutrix are that she was in love with the applicant herein and had developed sexual relationship with him. It is further stated that the applicant herein had assured the

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prosecutrix to marry her and continued the sexual relationship due to which the prosecutrix became pregnant. Upon this, she requested the applicant herein to marry her but the applicant refused saying that he was not the father of the child conceived by the prosecutrix. A report was lodged on 2.10.2006 at P.S. Telibanda, Raipur i.e. after about 2 years from the first time the applicant is alleged to have indulged in sexual intercourse with the prosecutrix. The material produced before the prosecution also shows that the prosecutrix had given birth to a male child. After completion of investigation, the appellant was prosecuted under Section 376 IPC.

During the course of trial, an application under Section 45 of the Evidence Act vide Annexure A-3 was filed by the applicant before the trial Court praying that D.N.A. test be permitted to be performed to establish parenthood of the child born to the prosecutrix. Learned trial Court rejected the prayer observing that the proper forum for D.N.A. test was not the trial Court wherein the question whether the applicant herein had committed rape on the prosecutrix was alone to be decided by oral evidence.

Shri Manoj Paranjpe, learned counsel for the applicant submitted that to establish the defence of the innocence of the

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applicant that he has been falsely implicated by the prosecutrix, D.N.A. test was a sure proof of the parenthood of the child born to the prosecutrix. Since the prosecutrix has alleged that she was maintaining sexual relationship with the applicant herein for a very long duration, being in love with him. It is not a case in which a sexual assault on any particular day has been alleged. In order to prove his innocence, D.N.A. test alone was the only alternative. On the other hand, Shri Ashish Shukla, learned G.A. for the State has opposed the prayer.

Having heard the rival contentions and after perusing the facts and circumstances of the case, this revision deserves to be allowed. In the case of the present nature where the prosecutrix is alleged to have indulged in sexual relationship with the applicant herein for a very long duration upon assurance of marriage by the applicant, D.N.A. test would establish the truth of the allegation levelled by the prosecutrix against the applicant. It would also give an opportunity to the applicant herein to establish his innocence. The impugned order whereby the prayer under Section 45 of the Evidence Act was refused, has caused a serious prejudice to the applicant in his defence.

[पीछे देखिये

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	In the result, this revision is allowed. The order dated 7.3.2006 passed by the 4th Addl. Sessions Judge, Raipur is set aside. The prayer under Section 45 of the Evidence Act is granted. The trial Court is directed to take necessary steps for undertaking D.N.A. test, as prayed by the applicant. Sd-/ Dilip Raosaheb Deshmukh Judge	